IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.171 OF 2006
IN
NOTICE OF MOTION NO.191 OF 2005
IN
SUIT NO. 3631 OF 2004

Kishor Kumar Kahanderao Pitale ...Appellant

V/s

Arti Dhananjay Chonkar ...Respondent

Shri.S.Ratnakumar Sharma for the Appellant.
Shri.D.G.Aras i/b. Aras & Co. for the Respondent.

CORAM : DR.S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.

DATE : 20TH MARCH, 2006.

P.C.:

1. Heard the learned Counsel for the parties. By this appeal, the Appellant is challenging the order dated 8th February, 2006 passed by the learned single Judge in Notice of Motion.

2. The main grievance of the Appellant is that he has not been granted time to file an affidavit-in-reply in the above. We have perused the order. The learned single Judge has rightly held that inspite of more than a year had passed, the affidavit-in-reply has not been filed. The learned single Judge had proceeded to decide the matter on the averments made by the Plaintiff and granted the reliefs as claimed by the Plaintiff.

3. However, having regard to the facts and circumstances, atleast one more opportunity could have been granted to the Appellant to file an affidavit-in-reply. Hence, we set aside the aforesaid impugned order dated 8th February, 2006, only to enable the Appellant to file an affidavit-in-reply before the learned Single Judge within a period of two weeks from today subject to the condition that the Appellant shall pay sum of Rs.5000/- as costs condition precedent, within a period of 10 days from today. Appeal is accordingly allowed. It is made clear that if the aforesaid costs are not paid within ten days, the main impugned order will automatically stand revived.

(DR.S.RADHAKRISHNAN,J.)

(S.J.VAZIFDAR,J.)